

**BEFORE THE  
COMMISSION ON COMMON OWNERSHIP COMMUNITIES**

In the matter of

DORAL HOMEOWNERS ASSOCIATION	:	
c/o Myranda Nickoloff, Community Manager	:	
Gaffigan Management Corp.	:	
14904 New Hampshire Avenue	:	
Silver Spring, MD 20905	:	
	:	
Complainant,	:	
vs.	:	Case No. 592-G
	:	
MOHAMMED A. MOTALIB	:	
701 Brandon Green Drive	:	
Silver Spring, MD 20904	:	
	:	
Respondent.	:	

**DECISION AND ORDER**

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland (the "Commission") for hearing on April 30, 2003 pursuant to §§10B-5(i), 10B-9(a), 10B-10, 10B-11(e) 10B-12 and 10B-13 of the Montgomery County Code, 1994 as amended, and the duly appointed Hearing Panel, having considered the testimony and evidence of record, finds, determines and orders as follows:

**Background and Summary of Testimony and Evidence**

This matter comes before the Commission pursuant to a Complaint filed August 5, 2002 by the Doral Homeowners Association ("Doral") represented by John F. McCabe, Jr., Esquire. The Complaint alleges that the owner of 701 Brandon Green Drive, Silver Spring, Maryland, Mohammed Motalib (together with his wife and co-owner, Lucky Haroon, collectively "Respondent") had sub-divided the detached single family house (the "Property") located at that address to allow for rental units in violation of county law and certain provisions of the Doral Community Declaration of Covenants, Conditions and Restrictions dated July 12, 1989, as amended (the "Covenants").

The Complainant presented testimony of Mr. Robert J. Dejter, Housing Code Inspector for Montgomery County, Maryland (the "County"), regarding his efforts to inspect the Property for violations of Montgomery County law regarding creation of accessory living units within the Property.

Mr. Dejter testified that on January 24, 2002, following receipt by the County of certain anonymous complaints, he went to the Property and was given permission to enter and inspect the house. At that time he observed that an accessory apartment, as defined by Montgomery County

law, had been created in the basement of the Property, and was being occupied at that time by two adults and one child. He asked to enter another portion of the Property located on the first floor at the end of the driveway but was told by the Respondent that the Respondent did not have a key to that area of his house. Following this inspection, on February 7, 2002, Jerri Burgess, Housing Code Inspector for Montgomery County mailed a letter to the Respondent advising that an accessory apartment was present and that it violated the Montgomery County Code. The letter advised the Respondent of the options available to legalize the unit.

On April 1, 2002, Mr. Dejter mailed another letter to the Respondent indicating that no response had been received by the County to the letter of February 7, 2002 and reminding Respondent that in no event could the cellar bedrooms be used as sleeping areas until egress windows were installed, and advising that a re-inspection would be made on April 8, 2002.

On April 4, 2002, Respondent filed an Affidavit of Compliance for a Registered Living Unit with the Department of Housing and Community Affairs, making affidavit under penalties of perjury that there exists a separate living unit in the Property and that the occupants were household employees and/or relatives of Respondent.

Mr. Dejter then testified that on April 8, 2002 he conducted the re-inspection of the Property in the company of the Respondent and took several digital photographs of the Property. At that time, he again found that the basement was being occupied as a separate apartment in violation of Montgomery County law. Following that inspection, he issued and served upon Respondent a civil citation against Respondent for violation of Montgomery County Code §29-16(a) "operating a rental facility without obtaining a rental facility license (accessory apartment)."

On August 27, 2002, the matter of the civil citation was heard in the District Court of Maryland, and as a result of that hearing, the Court issued an "Order For Abatement" in which the Court found that the Respondent had violated Montgomery County law as stated in the citation, that Respondent was ordered to refrain from further violations, and the Court further ordered that by October 1, 2002 Respondent must cease operating the rental facility on the Property and that a representative of Montgomery County shall be permitted to inspect the Property to verify compliance with the Order.

Mr. Dejter then testified that on September 5, 2002 he received by mail a copy of a letter from a person named Rochelle DuPlessis, written to Mr. Haroon, son of Respondent, in which she made many allegations relating to the Property, her occupancy of the Property and the Order of Abatement requiring her to vacate the Property, and including representations that the Property was the subject of a lease between her and Respondent.

Pursuant to the August 27 Order, Mr. Dejter conducted a follow-up inspection of the Property on October 1, 2002 and discovered a third separate apartment in the Property, located in the basement. Mr. Dejter took pictures of the additional apartment which were admitted into evidence, as was his Memorandum dated October 4, 2002 directed to the Director of the Montgomery County Office of Zoning and Administrative Hearings, in which Mr. Dejter outlined in detail the issues which he found on his inspection regarding the status of the three accessory apartments located on the Property.

On February 12, 2003, Mr. Dejter conducted a further inspection, and, in addition to the circumstances found during his previous inspections, he testified that he found a child's crib located in one of the basement accessory apartments. On that day, he issued a new civil citation against Respondent for maintaining the new third accessory apartment. On February 13, 2003, Inspector Dejter wrote a letter to Respondent, served upon Respondent by posting at the Property, advising Respondent that the hearing on his application for special exception to maintain the first accessory apartment had been postponed indefinitely pending the resolution of the Complaint before the Commission on Common Ownership Communities which is the subject of this Decision and Order. He further notified Respondent of his obligation to vacate all cellar dwelling units within 30 days of the letter and that all beds must be moved to the living room, rather than the bedrooms until the Property was vacated, as there was no means of egress from the bedrooms and they could not be legally used as sleeping areas.

Mr. Dejter then presented copies of letters received by him sent by Respondent to David Nyakiti and Bryan Rudolph, requesting that they vacate the Property within 30 days. Mr. Dejter then testified that he observed on the day of the hearing, April 30, 2003, that one of the basement units appeared to still be occupied by the African-American family (Nyakiti), in continuing violation of the county's citations and court order.

Mr. Ed Smith, a homeowner in the neighborhood and former president of the Doral Homeowners Association, Inc. then testified that he had observed the Property being occupied by various persons other than the Respondent and his immediate family from 1999 to the present, including the day of the hearing, April 30, 2003. Mr. Smith presented a photo taken that day of the Property showing the car of the African-American family tenants located on the street along side of the Property.

Respondents then each testified that the separate accessory apartments were necessary because of several health problems suffered by Mr. Motalib, including coronary artery disease and a history of seizure disorder. Respondent testified that the tenants in the Property did not pay rent, in his definition of the term, but were there primarily to give him physical and financial assistance. Each Respondent disputed Inspector Dejter's contention that as many as three separate apartments were ever constructed or located within the Property, however, there was no serious dispute that at least one accessory apartment existed in the basement of the Property.

### **Findings of Fact**

The Declaration of Covenants, Conditions and Restrictions for the Doral Homeowners Association, Inc. governs the uses of the Property. The Declaration, Section 6.01, provides that the "no building shall be erected, altered, placed or permitted to remain on any such Lot other than one used as a single family dwelling." Further, Section 6.03 of the Declaration provides that "no portion of a dwelling unit other than an entire dwelling unit may be leased or rented." That Section goes on to require that leases of the units be on forms approved by the Association. The Declaration contains no exception to the foregoing rules applicable to the matter presented.

Respondent has never requested permission of the Association to create accessory apartments within the Property and has never submitted any lease to the Association for its review and approval.

Respondent has created three separate accessory apartments within the Property. One apartment is located on the main first floor in the location of the home in which a garage is usually erected. The Property had been the model home for the developer and the garage space had been transformed into a sales office. That area had been at one time during the past year been used as a separate apartment.

A second apartment is located in the basement of the Property and has been occupied by the family of David Nyakiti, including the day of the hearing April 30, 2003. The Nyakiti family is not related to the Respondent.

A third apartment is located also in the basement of the Property and has been occupied as a separate residence during the past year.

Mr. Motalib suffers from coronary artery disease and has a history of seizure disorder.

### **Conclusions of Law and Discussion**

Upon a review of the testimony and other evidence submitted as set forth above, the Panel concludes that Respondent has violated and continues to violate the Covenants governing the Property as follows:

1. Respondent has violated Section 6.01 of the Covenants in that the Property is not now being used as a "single family dwelling," but has been constructed to include three separate accessory apartments and is presently being used as a dwelling for between 2 and 4 families;
2. Respondent has violated Section 6.03 of the Covenants in that portions of the Property other than the entire Property are being leased or rented; and
3. Respondent has violated Section 6.03 of the Covenants in that Respondent has leased the Property without having obtained approval of the Association of the form and substance of such leases.

While the Panel acknowledges that Respondent's testimony and exhibits demonstrate that Mr. Motalib suffers from coronary artery disease and has a history of seizure disorder, the Panel finds that the tenants of the Property are not licensed care-givers, are not paid to care for Mr. Motalib and that the occupancy of the accessory apartments by each of the various tenants at various times during the past year has been unrelated to Mr. Motalib's medical condition, except in a superficial manner not legally relevant to the issues presented before the Panel.

## ORDER

Based upon the evidence of record and for the reasons set forth above, it is this 12<sup>th</sup> day of June, 2003, by the Commission on Common Ownership Communities:

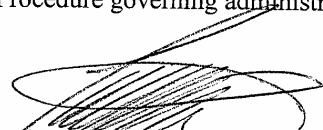
1. ORDERED, that the Property of Respondent be returned to a single family dwelling and that the three accessory apartments created within the Property be dismantled as follows:
  - a. all kitchen equipment, including kitchen sinks, ovens, stoves, microwave ovens and refrigerators, other than those within the main first floor kitchen of the Property, must be removed from the Property, except that one refrigerator may be maintained in the basement for use exclusively by Respondent;
  - b. all beds must be removed from all rooms which are partitioned within the basement accessory apartments as bedrooms;
  - c. all occupants of the Property other than the Respondent and family members of the Respondent must permanently vacate the property; and
  - d. Respondent's future use of the Property must comply with the Covenants and the terms of this Order;

and it is further

2. ORDERED, that the Respondent shall complete the dismantling of the three accessory apartments as required herein within thirty (30) days following the date of this Order; and it is further
3. ORDERED, that the Respondent permit the Complainant's representative to inspect the Property upon reasonable notice following the expiration of the foregoing thirty (30) day period to verify Respondent's compliance with the terms of this Order.

Panel Members Harold Huggins and Maggie Bruce concur unanimously in this decision.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

  
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Louis S. Pettey, Panel Chair

Copies to:

John F. McCabe, Jr., Esq.  
200A Monroe Street, Suite 300  
Rockville, Maryland 20850

Mohammed A. Motalib  
701 Brandon Green Drive  
Silver Spring, MD 20904